INDEX

	Page
Opinion below	1
Jurisdiction	1
Questions presented	2
Statutes and regulations involved	3
Statement	3
Argument	22
Conclusion	33
Appendix	34

CITATIONS

Cases:	
Cox v. *United States*, 332 U. S. 442	23, 32
Davis v. *United States*, 203 F. 2d 853, certiorari denied, 345 U. S. 996	31
Niznik v. *United States*, 173 F. 2d 328, certiorari denied, 337 U. S. 925	31, 32
Tyrrell v. *United States*, 200 F. 2d 8, certiorari denied, 345 U. S. 910	25, 27
United States v. *Zieber*, 161 F. 2d 90, certiorari denied, 333 U. S. 827	31, 32
Statutes:	
Universal Military Training and Service Act:	
Section 6 (g) [50 U. S. C. App., Supp. V, 456 (g)]	34
Section 12 (a) [50 U. S. C. App., Supp. V, 462 (a)]	35
Section 16 (g) [50 U. S. C. App., Supp. V, 466 (g)]	34
Regulations, Title 32, C. F. R. (1951 ed.):	
Section 1626.12	36
Section 1626.23	36
Miscellaneous:	
S. Rep. 1268, 80th Cong., 2d sess.	24

tions for rehearing were denied on July 27, 1953 (R. 243; P. 373). The petition for a writ of certiorari was filed on August 26, 1953. The jurisdiction of this Court is invoked under 28 U. S. C. 1254 (1). See also Rules 37 (b) (2) and 45 (a), F. R. Crim. P.

QUESTIONS PRESENTED

1. Whether, in a criminal prosecution for refusal to be inducted into the armed forces, the trial judge erred in instructing that there was a basis in fact for the rejection of petitioners' claims for exemption as full-time students for the ministry.

2. Whether the trial judge erred in refusing to admit evidence by which petitioners sought to establish whether exemptions had been granted in purportedly similar cases.

3. Whether petitioner Parkhurst, who filed with the appeal board a detailed supplement to the transcript of his hearing before the local board, without mention therein of conduct at the hearing indicating bias, was entitled to have the jury consider his assertion to that effect made for the first time in the criminal prosecution.

4. Whether, in view of the fact that the single issue before the jury was knowing refusal to be inducted, and in view of petitioner Parkhurst's own admissions on that issue, there was prejudicial misconduct at the trial.

STATUTES AND REGULATIONS INVOLVED

The pertinent portions of the Universal Military Training and Service Act and regulations issued thereunder are set forth in the Appendix, *infra*, pp. 34–36.

STATEMENT

Petitioners seek review of the judgments of the Court of Appeals for the Ninth Circuit (R. 242; P. 372), affirming judgments of the District Court for the Northern District of California adjudging petitioners guilty upon the verdict of a jury (R. 13–14; P. 13–16), and imposing sentences of five years' imprisonment and fines of $10,000, in each case, for violation of the Universal Military Training and Service Act by refusing on February 1 and February 5, 1952, respectively, to be inducted into the armed forces.

Petitioner Reed's record with the selective service system may be summarized as follows:

He registered on September 1, 1948, stating his date of birth to be April 27, 1929, a mailing address of P. O. Box 3652, Rincon Annex, and, as the name and address of a person who would know his address, Mrs. A. P. Nordscot, 801 Silver Avenue, San Francisco, California. He stated his occupation as "student ministry" and his "[p]lace of employment or business" as 801 Silver Avenue (Gov. Ex. 1; R. 21–22).

On December 3, 1948 (Gov. Ex. 2; R. 25), Reed filed his classification questionnaire stating, "[m]y address now is 801 Silver Avenue." He listed a

Social Security number. He stated, in the portion of the questionnaire relating to ministers and students:

> I am a student preparing for the ministry under the direction of Christ's Church of the Golden Rule in a theological or divinity school. I am attending the Christ's Church of the Golden Rule Theological Seminary located at 801 Silver Avenue.

Reed also attached to his classification questionnaire a statement as follows (R. 26):

> It is my desire to bring before the attention of the local board the importance of being able to complete my studies as a student minister of Christ's Church of the Golden Rule so that I might live Christ Jesus' teachings, setting an example for all humanity and proving the practicability of Christ Jesus' teachings and the Golden Rule for the benefit of all people of the world.
>
> It is my firm belief that Christ Jesus' teachings are the only salvation to world problems of today and if lived would bring peace and happiness to all mankind.
>
> With these facts in mind I believe the local board will see the importance for me to continue to study as a student minister of Christ's Church of the Golden Rule.

Also attached to the classification questionnaire was a letter (R. 26–27) bearing the letterhead "Theological Seminary, Christ's Church of the

Golden Rule, 801 Silver Avenue, * * *" stating to the Selective Service system:

> This is to certify that Edward David Reed is registered and enrolled as a full-time student minister in the Theological Seminary of Christ's Church of the Golden Rule.
>
> He is earnestly and sincerely pursuing his studies, endeavoring to become qualified to teach, preach, and illustrate the precepts of the great Wayshower of man.

The letter was signed by one "Lewis B. Hart, D. D., Ph. D., M. A., Assistant Dean of the Faculty, Theological Seminary."

Under Series VIII, "Present Occupation", Reed stated "I am now a full-time student." Reed listed eight years of elementary school and two years of high school (he did not graduate). He listed, in addition, "Christ's Church of the Golden Rule, student minister." The length of time attended was stated at four years, eight months, and no "degrees or certificates" were listed. The place at which conscientious objection was required to be noted was left blank. (Gov. Ex. 2; R. 22–25.)

On August 14, 1950, Reed was classified IV–D (Gov. Ex. 2; R. 27). On June 6, 1951, the local board, by letter, asked Reed for:

> * * * a precise report of the amount of time that you spend as a minister of Church, and also a report of the other

> activities that you may be engaged in, so that your file may be brought up to date. [Gov. Ex. 3, R. 29.]

In reply (Gov. Ex. 4; R. 31–33), Reed sent the board a letter enclosing a copy of the constitution of the church, canon laws, a document "Our Vision," and miniature sermon reference data, #1, Section 1. In this letter, he stated, *inter alia:*

> I spend considerable time each day studying the prescribed selections of our Church literature as set forth for daily meditation and study for each day of the week, and the writing of miniature sermons based upon this study and meditation for each day. Also regular attendance and active part at our morning Devotional Services and at other regularly established study and class meetings for the purpose of further study of the Ideals and Principles of the teachings of Christ Jesus. Time between classes, study periods and meetings is spent exclusively in the practical application and promulgation of the Ideals, Ideas and Principles of Christ's Church of the Golden Rule and to demonstrate the practicability of Christ Jesus' teachings as a way of life so that all mankind can live in peace and harmony.
>
> I receive nothing in the way of material reward for the services rendered, but my time and the benefit therefrom are spent exclusively for the advancement of our Christian Ministry as Christ Jesus taught.

The constitution and canon laws, while establishing various "ecclesiastical" and "temporal" bodies and a "College of Pastors", and while empowering the ecclesiastical "organization" to provide for "ordination" (Def. Ex. C: Const. II, p. 2, V. (2), p. 4, VII, p. 5; Canon Law #3, p. 4, #5, p. 5), referred to the entire organization as a ministry and established no definite, separate group as ministers nor any curriculum for becoming a minister in the ordained sense. "Student ministers" were defined as persons not yet admitted "to lay or ordained membership. This is a probationary status." Lay members were defined as those who wished to dedicate their lives "to the ministry of the Church" (Canon Law #15 (3), (5), p. 11). The definition of a "project" was not restricted to the ordinary concept of a seminary but included an enterprise in which a group "undertakes to apply and illustrate Christianity" (Canon Law #22, p. 14).

On June 29, 1951, the board notified Reed to appear for a special hearing on July 2. At that hearing, the board concluded that the evidence did not warrant IV–D classification, and Reed was reclassified I–A (Gov. Ex. 2; R. 28). The summary of the hearing (Gov. Ex. 5; R. 34–37) stated, *inter alia:* that Reed was unable to name anyone who had been ordained and was unable to say when he would be ordained, the failure to ordain anyone thus far being ascribed to litigation; that

276095—53——2

Reed's statements of the length of time he had studied were contradictory (four to five years versus eight years), that questions were "evasively answered * * * as if the registrant was well schooled in his duties to answer"; that Reed testified that "they have frequent study periods, such as taking fifteen minutes in the mornings for studies, and then apply them in practice sermons right after, and also later in the evenings, consisting of ten or less persons in the class"; that Reed stated that students did "various types of trade-work around the church such as carpentering, kitchen help, and all around handy-man work, as well as their "practice of sermons and passages," and that he received his food, clothing, and entire support from the church.

Reed thereafter requested a hearing on the I–A classification (Gov. Ex. 6; R. 37–38). This hearing took place on July 23, 1951, and resulted in continuance of Reed in Class I–A (Gov. Ex. 2; R. 38–39). The hearing was fully transcribed, and developed only the following additional elements (Gov. Ex. 7; R. 41–52): Reed now stated that he had been a "student minister" of the organization since 1944; that he had "lived there" since 1944, and that the course of study to be a minister would normally be four years but there had been delay due to litigation. His entire family was also "studying to be ministers," including a 12-year-old sister and a 74-year-old grandmother. Reed's testimony as to the instruc-

tors was not clear.[2] His statement of the daily routine added a half-hour period of bible study prior to the 15-minute period of "devotion." Reed presented for the file a copy of a letter of his church to General Hershey urging recognition of the church for the purposes of selective service.

On August 2, 1951, Reed filed with the board a memorandum providing rephrased answers to the questions as to when he would be ordained

---

[2] The following is typical (R. 42–44):

Mr. SWIG. How many instructors have they got?

No response.

Mr. SLAVICH. About how many instructors are there in the school?

REGISTRANT. Quite a few.

Mr. SLAVICH. Well, how many?

No response.

Mr. SLAVICH. Well, do they have five, six, ten, fifteen? More than that?

No response.

Mr. SLAVICH. How many are there?

REGISTRANT. Three delegates, five elders.

Mr. SWIG. How many teachers are there to teach you how to preach sermons? How many teach you?

REGISTRANT. Well, we all teach.

Mr. SWIG. Do you have any ordained ministers?

REGISTRANT. We have one ordained minister.

Mr. SWIG. In the whole organization? What's his name?

REGISTRANT. Rev. Hart, he helps us with our studies.

Mr. SLAVICH. Is he the only help?

REGISTRANT. We have our classes.

Mr. SLAVICH. How many teachers? Just one.

REGISTRANT. The only one who is ordained.

Mr. SWIG. You previously said you did not know of anyone who had been ordained by your church.

REGISTRANT. He has not been ordained by our church, but he teaches us and supervises our literature committee.

and how he spent his time as a student. He closed the memorandum with a remark, concerning the hearing, that after these questions, "I was asked innumerable questions which to me have no bearing as to my status as a student minister." (Gov. Ex. 8; R. 52–56.) He also filed a letter of appeal (Gov. Ex. 9; R. 52–53, 56–59).[3]

On August 30, 1951, the appeal board classified Reed I–A by a vote of 4–0 (Gov. Exs. 2 and 14; R. 65–66). On February 1, 1952, he refused to be inducted (R. 88–90, 92–93, 95, 184).

At the trial before a jury, in May 1952, Reed and two persons connected with his organization

---

[3] These items stated only insubstantial additions and changes. E. g., in the board transcript, Reed had been reported as stating that he devoted the morning half-hour period to Bible study (R. 46), while the rephrased answer referred to study of "church literature" (R. 55). The appeal letter repeated the assertion that the student training projects enabled student ministers to learn to apply the golden rule to "everyday life" (R. 57–58). With the appeal letter, there were also sent to the appeal board 19 items of church literature, correspondence, and the like (Gov. Ex. 11; R. 59–61). One of these items was a certificate, dated July 31, 1951, by the "Board of Review" of the organization, signed by its chairman, that Reed was "properly enrolled as a student for the ministry" of the organization, that Reed "consistently prepares his weekly sermons" and had a good attendance record, that Reed did not use tobacco, alcoholic beverages, or unbecoming language, and that Reed was "honestly and sincerely pursuing his studies and ministerial training toward ordination as a minister" (Def. Ex. A–1; R. 75–77). Further literature was received on August 13, 1951, and forwarded to the appeal board, and the case was reviewed but not reopened, on August 13 and 28, 1951 (Gov. Ex. 2 and 13; R. 63–64).

testified to substantially the facts and the general course of activity theretofore presented to the board as study for the ministry (R. 146–184, 192–193).

Reed added that in November 1948, and for seven months before, he had been at a "training project" of his organization in Mendocino County as a sawyer in a sawmill (R. 168–169). Marion T. Huff, secretary of the elected delegates' committee (R. 146), added a correction that there had been one ordination in the eight years since establishment of the organization, the ordination of a new senior elder by the advisory board of elders (R. 148, 151).

Petitioner Parkhurst's record with the selective service system may be summarized as follows:

He registered on September 1, 1948, stating his date of birth to be April 23, 1927, a mailing address at 801 Silver Avenue, San Francisco, California, and, as the name and address of a person who would know his address, Miss A. Nordskott, 801 Silver Avenue. He stated his occupation as "student minister" and his "[p]lace of employment or business" as the Christ Church of the Golden Rule, 801 Silver Avenue. (Gov. Ex. 1; P. 33.)

On October 28, 1948, Parkhurst filed his classification questionnaire, stating "[m]y address now is 801 Silver Avenue." He listed a Social Security number. He stated, in the portion of the questionnaire relating to ministers and students, "(a)

I am a student preparing for the ministry under the direction of Christ's Church of the Golden Rule in a theological or divinity school. (b) I am attending the Theological Seminary of Christ's Church of the Golden Rule located at 801 Silver Avenue." He also stated "I am now a full time *student minister.*" After the printed words:

> The job I am now working at is (give full title, for example: Construction draftsman, turret lathe operator, stationary engineer, farm laborer, prosecuting attorney, physics teacher, policeman, marriage license clerk, etc.):

Parkhurst typed the words "Studying for the ministry," and after the words:

> I do the following kind of work in my present job (be specific. Give a brief statement of your duties),

he wrote "Whatever is required of a student minister." (Gov. Ex. 2; P. 34–37.)

Parkhurst listed education of eight years of elementary school and three years of high school (he did not graduate). He listed, in addition, "Theological Seminary of Christ's Church of the Golden Rule. Course of study: Studying for ministry." He stated that he had attended the Seminary for four years and four months, without receipt of a degree or certificate. (Gov. Ex. 2; P. 38.)

Parkhurst signed the form stating that he was a conscientious objector, but stated that he desired no forms for pursuing the claim as he was re-

questing classification as a student minister (Gov. Ex. 2; P. 38–39).

Parkhurst attached a letter to the Selective Service System under the letterhead of the "Theological Seminary, Christ's Church of the Golden Rule, 801 Silver Avenue," as follows (Gov. Ex. 2; P. 39–40):

> This is to certify that Jack Henry Parkhurst is a student minister of the Ecclesiastical society of Christ's Church of the Golden Rule. He is sincere and consistent in his theological studies and application.
>
> (S) (Rev.) Lewis E. Hare,
> DD., Ph. D., M. A.,
> *Assistant Dean of the Faculty,*
> *Theological Seminary, Christ's*
> *Church of the Golden Rule.*

On August 8, 1949, Parkhurst was classified IV–D by a vote of 2–0. Some eleven months later, on June 22, 1950, he notified the board of a change of address to Eagle Point, Oregon, stating "I am still studying for the ministry in the same capacity as I was when I registered in September 1948." On July 12, 1951, he notified the board of a change of address to "P. O. 3852, Rincon Annex, San Francisco 19." (Gov. Ex. 2, 3, and 4; P. 40–42.)

On July 16, 1951, Parkhurst was reclassified I–A (Gov. Ex. 2; P. 42). He presented proof to the board that he had been married on September 12, 1949. He was reclassified III–A (Gov. Ex. 2 and 7; P. 44–46). He requested a hearing

because of reclassification from IV–D to III–A (Gox. Ex. 2 and 9; P. 47–48) and appeared before the board on September 11, 1951 (P. 49). A full transcript of the hearing was taken and disclosed testimony by Parkhurst to the following effect (Gov. Ex. 10, 11, 12; P. 48–65):

He testified that he lived at 801 Silver Avenue and followed his "course of studies" at the same address (P. 51). He had become a member of the organization seven years before and become a student minister at the same time (P. 51–52, 53–54). The "course" consisted of daily morning "devotion" of about a quarter hour (P. 51, 52, 56) three or four hours of "study" or "students' meetings" in the evening, and eight hours of "laboratory work"—physical labor for the organization (P. 51, 59–60).

The devotional services consisted of a song, reading from the Bible by one of the "ministers," and then "study" of what had been read. There was also "study alone" (P. 53). On Monday evenings, for an hour to two hours, there was discussion "in classes" of "miniature sermons" written out by the student ministers without instruction (P. 54–55, 59–60). On Tuesday evenings there was study for an hour, without supervision, of literature of the organization (P. 55), and various types of "meetings" and sometimes "a free period" (P. 56); on Wednesday evenings, one hour study of the literature and "group discussion of the sermons" led by one of the students

(P. 57); on Thursday, Friday, and Saturday evenings, no scheduled meetings—"a reasonably free time" (P. 57), except Friday evening "business meetings" for discussion of "what is coming up, the laboratory and the mental or physical labors" (P. 58). On Sundays, no assignments were given beyond the morning 15-minute devotion period (P. 58–59).

The "laboratory work" was directed by "whoever happens to be in charge at the time" (P. 54). No wages as such were paid for the eight hours of physical work per day, but the organization supplied room, board, and clothing (P. 60). Parkhurst's work consisted of gardening on a farm in Marin County owned by the organization (P. 62–63) and he explained orally and by a written statement that the physical work was part of the training since it afforded practice in actual application of the golden rule (Gov. Ex. 12; P. 60–61, 63, 68–71).

The student ministers ranged in age from 15 to 20 (P. 59). Parkhurst did not know whether anyone had ever been ordained but asserted that

> about six years ago a date had been set, but the church has been tied up in court, and we don't have time for examinations [P. 63].

At the close of the hearing, the chairman, referring to the absence of a curriculum or any ordination of ministers, voted for retention of

the III–A classification. The two other members voted in accord (Gov. Ex. 2; P. 64–65, 72).

On October 2, 1951, Parkhurst filed a notice of appeal, together with certain notes on the hearing, a certificate, and literature of his organization, including a copy of the organization's constitution and canon laws, discussed *supra*, p. 7 (Gov. Ex. 2; 13 A–E; P. 73–75).[4]

On October 25, 1951, Parkhurst was classified I–A by the appeal board (Gov. Exs. 2, 14; P.

---

[4] The notes stated that the stenographic transcript of the hearing was "accurate" but "all was not included" (P. 75). The notes, however, added only further emphasis of the argument that the eight hours of physical work constituted study for the ministry, and added a question by the board chairman as to whether Parkhurst would accept limited service in the army (P. 75–83). The certificate by the chairman of the "Board of Review" of the organization (a board made up of student ministers [P. 83]), stated that Parkhurst was "properly enrolled as a full time student for the ministry" of the organization, that he was "carrying out the course of study and training as prescribed by the duly constituted ecclesiastical government," that he did not use tobacco, alcohol, or unbecoming language, and that he was "sincerely pursuing his studies and ministerial training toward ordination as a minister" (Gov. Ex. 13–B; P. 83–85). The letter of appeal stated, *inter alia* (Gov. Ex. 13–E; P. 87):

"I do not even pretend to devote my life to *pulpit preaching*, but rather I am learning to *practice* that others who desire may follow my example. The world has been under the influence of pulpit preachers for centuries and it has accomplished little or nothing. * * *

"I expect to be ordained the middle of next year provided I meet the requirements, which, of course, are that I am sufficiently able to demonstrate the principles described previously in this statement."

88–90). He wrote to the State Selective Service headquarters, complaining of the decision. The file was sent to State headquarters, which thereupon advised Parkhurst, on November 19, 1951, that the file disclosed that the local and appeal boards had acted properly (Gov. Ex. 2, 16, 18, 19; P. 91–97). On January 24, 1952, Parkhurst wrote to the local board, *inter alia* (Gov. Ex. 23; P. 99–102):

> * * * [B]ecause I had every reason to believe that my qualifications as a student minister would be respected I did not file a C. O. questionnaire.
>
> Because of the nature of the ministry for which I am studying, I am unavoidably also a C. O.
>
> I feel a responsibility to God (our Creator) which I do not see my way clear to disobey, therefore I am forced to choose between obedience to a higher law and a man-made law. When this choice comes I see no other alternative than to respect the Supreme Power of the Universe, the Highest Law I know of. * * *
>
> I will comply with the law up to the step forward. At this point my convictions will not permit me to go further because of the nature of the ministry for which I am studying (the ministry of Love). * * *
>
> * * * * *
>
> In the light of this responsibility I find it impossible for me to comply with the

requirements of military training and life. I will make no effort to avoid the consequences of this action.

The letter was considered by the board and it was determined not to reopen the case (Gov. Ex. 2; P. 102). On February 5, 1952, Parkhurst refused to be inducted (Gov. Ex. 24; P. 113–115; 119–120, 122).

At the trial before a jury, in June 1952, Parkhurst and a person connected with his organization testified to substantially the facts and the general course of activity theretofore presented to the board as study for the ministry (P. 157–166, 171–178, 180–186, 188–194, 197–200, 202–203, 206, 208–214, 216, 218–229, 239–246, 270–271, 273–288). Parkhurst added that he "believe[d]" he had informed the board that there was supervision of the "training" by "elected delegates" (P. 213). He specified, upon cross-examination, that his manual work in training projects had included dairy, agricultural, ranch, and sawmill work, the latter work having been performed at Comptche, California, during the six months preceding, and several months following, his registration. He admitted that, several months after his registration, he had gone to a ranch in Oregon and stayed there until he received his I–A classification, and that he had had only several weeks of actual residence at 801 Silver Avenue since he had registered. (P. 239–244.) He also admitted that he had viewed the record of his personal appear-

ance before the board, a week or ten days after the appearance (P. 215, 217, 273), but contended that he did not receive a fair hearing (P. 216–218, 234–239, 246–249, 273):

> Because when I entered I knew that they had changed my classification from 4–D to 1–A with no change in facts. I also knew that they had made the statement that our church was not really a church, and third, I knew that the—well, there just was something in the air that I could not explain, their nods and smirks that passed.
>
> * * * * *
>
> * * * [W]hen I entered they cast around their general nods and smirks, and as though, "This is another church case," and then after I started answering the questions they took my answers as a joke. They didn't care for the answers. Just a—well, something very difficult to explain; something that could not be put down on paper.
>
> * * * * *
>
> * * * They were very interested in the questions, yes, to get them on the record, but they were not interested in my answers. The questions they asked were determined ahead of time to where they could not have been interested in my answers as to ask any questions. [P. 216–218.]

Upon cross-examination it appeared that he only "understood" that the board had stated that his organization was not recognized, and that this

understanding emanated from a remark to that effect by Robert Tyrrell, another member of his organization claiming exemption as a ministerial student and convicted for refusal to be inducted (P. 234, 248–249); *Tyrrell* v. *United States,* 200 F. 2d 8 (C. A. 9), certiorari denied, 345 U. S. 910. The chairman of the board testified that the charge of smirking, and the like, was "absolutely false" (P. 289–290).

Marian T. Huff, secretary of the elected delegates' committee, added the information that the organization was eight years old, numbered between 600 to 650 affiliates, of which three-fifths were student ministers and 20 to 25 were between the ages of 18 and 26 (P. 163, 192–193); that there had been no enrollments of men of draft age since formation of the organization (P. 201), and that the organization had made one ordination, in ordaining a new senior elder by action of the advisory board of elders (P. 174). She ascribed Parkhurst's possession of a Social Security number to the fact that "during certain litigation the bankruptcy trustees had to conduct the church's projects, and of course in their capacity had to take out social security on all of the student ministers" (P. 177–178).[5]

Each of the petitioners, during the course of his trial, sought to prove by various witnesses,

[5] Testimony of Parkhurst to same effect: P. 229–233, 286–287.

such as a selective service director or board member, and Catholic priests, and by general historical writings and directives of the national selective service director, that it was the policy and practice of the selective service system and of local boards to exempt as ministers and students for the ministry certain registrants from other religious organizations, such as Catholic lay brothers, Lutheran lay teachers, Jehovah's Witnesses, and colporteurs of the Seventh-Day Adventist organization, who were purportedly engaged in activities which petitioners claimed were comparable to their activities (R. 113–114, 122–125, 127, 141, 145; P. 23–24, 134, 140–143, 149–150, 155). The trial judge refused to admit the evidence, basically upon the ground that if the selective service board's denial of exemption to petitioners had basis in fact, it was not the province of the jury to determine whether exemptions had improperly been granted in other cases, nor was it the province of the jury to determine the law as to what constituted a student for the ministry either by determining what had been done in other cases or by evaluating pronouncements of administrative officials—the province of the jury being, under the issues of the present cases, to determine whether petitioners had knowingly refused to be inducted. The trial judge also adverted to the remoteness of any comparison of petitioners' group with the groups sought to be adduced as

comparable. (R. 115–116, 128, 131–132, 139–140, 142, 145; P. 149, 155.)

The two cases were consolidated for appeal and both judgments of conviction were affirmed (R. 242; P. 372).

ARGUMENT

1. The essence of this case is that the record contained ample basis for the selective service boards' rejection of petitioners' claims for exemption as ministerial students from military service. The statutory exemption is only for students preparing for "the ministry," pursuing "full-time" courses of "instruction" in theological "schools."

Here the record disclosed that petitioners worked a full eight-hour day at manual labor for an organization which was essentially an enterprise in cooperative living rather than a "school," and which, in turn, furnished petitioners their food, shelter, clothing and entire living needs. There were 15-minute devotional periods in the mornings and the organization supplied religious literature and references for individual study and group discussions in the evenings, but there was no "full-time" course as required by the statute, and there was no appreciable progress toward ordination at any stated or computable time. No one had even been ordained in the eight years of the organization's existence, except in the single case of the designation of a new

head for the organization by the "advisory board of elders."

There was no "instruction" other than that to be found in the Bible or the organization devotional materials. The "student ministers" compared notes among themselves concerning their writings of "sermons" and the "sermons" were apparently sent in to the main files of the organization, but the record shows no active instruction by teachers in any respect resembling the ordinary concept of full-time courses of "instruction," required by the statute.

Petitioners urged that their manual work was full-time training or "laboratory work" in living the golden rule, but the record disclosed no "instruction" as to either the work or the conduct while working. Moreover, if there had actually been any schooling or instruction it would have been a preparation, not for a ministry in any ordinary concept of the term, but a preparation for an effort of the entire organization to persuade the world to join in the organization's enterprises. The ministry contemplated under the statute is clearly not one in which the entire membership of an organization is to be exempted as ministers to the whole world. The ministers in the statutory sense are only the particular persons who are the spiritual leaders of the specific organization (*Cox* v. *United States,* 332 U. S. 442, 451), in the sense that

they are clearly set apart and distinguishable from the members generally. That this is the intended scope of the ministerial exemption is clear from the definitions of "duly ordained minister" and "regular minister" in Section 16 (g) of the Act, as explained in S. Rep. 1268, 80th Cong., 2d Sess., p. 13. See the Government's brief in *Dickinson* v. *United States*, No. 57, this Term. It follows that only one who is pursuing a full-time course of instruction which will result in his becoming a minister in this statutory sense is entitled to exemption as a ministerial student. As we point out below (*infra*, pp. 28–29), it is undisputed that the petitioners would become ministers (at some unknown date) only in the same sense as most of the other members of Christ's Church of the Golden Rule.

Petitioners were thus clearly outside the scope of the exemption, even upon full acceptance of their statements of fact. It is, moreover, patent on the face of the record, that petitioners' general reliability was subject to such serious question as to prohibit indiscriminate acceptance of their statements. There was too much of evasion and partial disclosure in their written documents, with actualities revealed only when the local boards called in petitioners and examined them. Thus,

for example, while the registration procedure and the questionnaire forms made specific provision for the possible difference between (1) registrant's residence, (2) registrant's mailing address, (3) address where registrant's whereabouts would be known, and (4) the address where registrant was employed, and while petitioners were each working in church industries outside of San Francisco, each petitioner gave only the 801 Silver Avenue, San Francisco, California, address as the place of employment or business, and each stated, "I am attending the Christ's Church * * * Theological Seminary at 801 Silver Avenue." Parkhurst, over a year and a half later, furnished the board an Oregon address, but the date of his doing so, June 22, 1950, was about a year and a half after his arrival there late in 1948, and coincided suspiciously with the mailing, on June 20, 1950, of an erroneous notice of exemption as minister to his fellow-worker Robert Tyrrell (*Tyrrell* v. *United States,* O. T. 1952, No. 536, R. 48, 221–222). Parkhurst again changed his address with the local board on July 12, 1951, to a San Francisco P. O. box of the organization, just six days after Reed had been mailed a I–A classification after personal examination by Reed's local board.

Similarly strange was the fact that, despite the places in the questionnaires for disclosure of

present occupation,* Parkhurst filled in this portion of the form by claiming to be a "full-time student minister" and filling in two subsequent blanks as follows (Gov. Ex. 2; italics supplied):

> 2. The job I am now working at is (give full title, for example: Construction draftsman, turret lathe operator, stationary engineer, *farm laborer,* prosecuting attorney, physics teacher, policeman, marriage-license clerk, etc.): *Studying for the ministry.*
>
> 3. I do the following kind of work in my present job (*Be specific. Give a brief statement of your duties*): Whatever is required of a *student minister.*

Accordingly, when the facts concerning the great preponderance of manual labor were elicited—and with some difficulty—from petitioners at the board hearings, the boards were entitled to doubt the asserted spiritual nature of petitioners' particular way of obtaining a liv-

---

* Series VIII.—PRESENT OCCUPATION:

1. Every registrant must check *each* of the following boxes appropriate to his case and follow the instructions indicated.

(a) I am now working on a farm, orchard, or ranch.

☐ If this box is checked complete Series IX.

(b) I am now working in a nonagricultural occupation.

☐ If this box is checked complete this series.

(c) I am now a full-time student.

☐ If this box is checked complete Series XI.

(d) I now have no employment nor am I a full-time student.

☐ If this box is checked complete Parts 7 and 8 of this series.

ing. The boards clearly were not required as a matter of law to find petitioners to be students preparing for the ministry and pursuing full-time courses of "instruction" in a theological or divinity "school." *Tyrrell* v. *United States,* 200 F. 2d 8, 10–11 (C. A. 9), certiorari denied, 345 U. S. 910, involving the same organization and substantially similar work.

2. Petitioners sought to prove that it was the policy and practice of the selective service system to exempt as ministers and, presumably, as students for the ministry, certain registrants from other religious organizations, such as Catholic lay brothers, Lutheran lay teachers, Jehovah's Witnesses, and colporteurs of the Seventh-Day Adventist organization, who were purportedly performing activities which petitioners claimed to be comparable to theirs. For this purpose, petitioners offered to adduce the testimony of two Catholic priests as to the activities of members of their particular orders and the allowance of exemptions to their members. They sought to question a member of each of the two respective local boards, and also the state director of selective service, as to exemptions for other religious organizations. They also offered in evidence for the jury certain passages from an opinion of the national selective service director issued in 1942 and certain passages from his report for 1941–1942, indicating the grant of exemptions to Catholic lay brothers, as "regular ministers of

religion," and to Lutheran lay teachers, and Jehovah's Witnesses.

This evidence was properly rejected, whether it be considered as an offer to the judge to aid him in the interpretation of the applicable law by reference to administrative practice, or as an offer to bring before the jury facts tending to show bias and discrimination. On either theory, the offered evidence would not have the remotest relevance unless it were shown that the groups covered by the offer of proof could be deemed, as petitioners claimed, comparable to the group represented by petitioners.

It is clear that no such comparability existed. It is common knowledge that each of the groups to which the offer of proof related—the Catholic lay brothers, the Lutheran lay teachers, the colporteurs of the Seventh-Day Adventists—are, at the very least, a group set apart and distinct from the general mass of each of such religious groups. Petitioners were not thus set apart as students for the ministry nor would they be in their ultimate ministry. The entire membership of Christ's Church of the Golden Rule is deemed a "ministry of example" (R. 153). In the *Reed* case, Mrs. Marion Huff, secretary of the elected delegates of the church (R. 146) testified that, for the present, this "ministry of example" was confined to their own people (R. 153). In the *Parkhurst* case, she testified that about three-fifths of the group were student ministers (P.

193), that there were other groups of "affiliates" and "co-workers," but she defined affiliates as "persons who are interested in the church's teachings and would like to know more about them, but who have taken no active steps to become students at all" (P. 191–192). Thus, in essence, the entire congregation is the student body for the ministry of the whole congregation. This one element sufficiently differentiates petitioners' situation from that presented by the other groups to make irrelevant any consideration of the classification given to such other groups. Since, as we have shown, petitioners were patently ineligible for the exemption claimed by them, the trial judge was clearly correct in refusing to explore, and in refusing to allow the jury to explore, the propriety of the classification of other persons whose relationship to the general memberships of their religious organizations is wholly different from that of petitioners to the members generally of their own sect.

3. In the case of Parkhurst, it is urged that the question of bias against him by the local board should have been submitted to the jury (Pet. 12, 21–22, 30–33). The contention is without merit. Petitioner adduced no admissible evidence on this point, but only, in effect, his subjective conclusions or accusations that the local board must have been biased to rule against him. Moreover, no claim of bias was raised in the administrative proceeding or against the ap-

peal board, whose *de novo* decision is the decision here involved. The accusation is first made in the criminal proceeding for refusal to be inducted.

Parkhurst first testified that the board had stated that his organization was not a recognized religious organization. Upon cross-examination, he conceded that this was hearsay—what a fellow draft-opponent, Russel Tyrrell, had told him that the board had said (*supra,* pp. 19–20). Beyond this, Parkhurst adduced only his impression—actually a conclusion rather than statement of fact—that the board was interested only in reducing his answers to writing rather than in considering his answers (*supra,* p. 19). Although he sought to shore this up with factual statements concerning smirks and nods, the total and actual testimony was nothing more than a nebulous conclusion and accusation—a repetition of a pleading rather than evidence for jury consideration, especially in the face of the fact that Parkhurst, in his very careful review of the hearing in his extensive memoranda for the appeal board (*supra,* p. 16), made not the slightest mention of any such conclusion, nor did he do so in his letter to the state director (*supra,* p. 17). Indeed, in his own rewrite of the hearing, Parkhurst had stated that the board chairman had "seemed to accept" the explanation of the manual work as constituting study (Gov. Ex. 13–A, p. 2; P. 77). Actually, there was, as noted (*supra,* pp. 22–27), such ample basis in fact for the board's decision, without need

of any bias whatsoever, as to compel the conclusion that the local board's decision was a direct and logical product of the weakness of petitioner's own case rather than of pre-judging of the merits.[7]

It is to be observed that the action of the appeal board is the final action here complained of. It was an action *de novo* upon a record which included a verbatim transcript of all of Parkhurst's assertions and argument. No claim is made that the appeal board acted upon the basis of bias. It required no training in the law or sharp mental capacity for Parkhurst, when detailing at extreme length to the appeal board many complaints as to the local board's decision, to state, as well, a complaint as to conduct which was purportedly so important and clear in his memory at the much later time of the criminal proceedings. Having failed to complain before the classification process was complete, Parkhurst was not entitled to raise the issue of visible bias as a defense for his refusal to obey the final induction order. *Davis* v. *United States,* 203 F. 2d 853 (C. A. 8), certiorari denied, 345 U. S. 996.[8]

---

[7] The board chairman, an attorney of 25 years' practice, termed petitioner's assertion "absolutely false" (*supra*, p. 20).

[8] Petitioners cite *Niznik* v. *United States*, 173 F. 2d 328 (C. A. 6), certiorari denied, 337 U. S. 925, and *United States* v. *Zieber*, 161 F. 2d 90 (C. A. 3), certiorari denied, 333 U. S. 827, for general language of those cases that questions of fact involved in a claim of bias are to be submitted to a jury. *Niznik* v. *United States* did not involve a situation, such as

[4] On behalf of petitioner Parkhurst, error is claimed because of various comments by the United States Attorney before the jury and because of several comments of the trial judge and

---

here, in which the purported evidence of bias was so much a matter of mere conclusion by the registrant that, as a matter of law, there was no evidence to go to the jury; indeed, the court, in *Niznik* v. *United States*, far from addressing any attention to that aspect, was confronted with just the reverse—a situation in which the Government conceded that evidence of outright statements by the board members tended to establish bias, but the trial court had deemed such evidence to be immaterial upon a mistaken belief that *Cox* v. *United States*, 332 U. S. 442, precluded entering into such a question if there was a basis in fact for the classification (O. T. 1948; No. 734, 735, 736, Br. in Opp. 14–15). Moreover, neither Niznik nor Commodor entered into extensive review of the local board hearing, as did Parkhurst, without stating a claim of prejudice; Niznik only filed a brief statement of appeal and a letter of an appeal agent, and Commodor affirmatively stated his complaint about the local board hearing to the appeal board (O. T. 1948, Nos. 734, 735, 736, R. 161, 168, 218). Similarly, in *United States* v. *Zieber*, 161 F. 2d 90 (C. A. 3), the issue as to whether there was evidence of fact, rather than conclusions of law by a witness, to go to a jury was not dealt with; there had been erroneous instructions in the trial court on the assumption that if the local board acted in good faith their erroneous refusal to receive evidence from the registrant could not be challenged. The court's remand on the ground that the issue of the sufficiency of a local board's summary was to be submitted to the jury in the absence of the raising of that question with the appeal board, was challenged by the Government in its Brief in Opposition (O. T. 1947, No. 503); registrant had filed a petition for certiorari on the ground that he was entitled to a dismissal rather than a remand, and the Government noted that, since registrant had failed to appeal to the appeal board, the remand order by the Court of Appeals was more favorable to registrant than was required.

his failure sufficiently to admonish and restrain the United States Attorney with respect to the claimed improprieties (Pet. 12–14, 22–23, 33–35). We submit that an examination of the full context in which the purported improprieties occurred will in each case disclose that the comments complained of were neither irrelevant nor actually to an improper effect. However, as pointed out by the court below (P. 371), since the only issue submitted to the jury was whether Parkhurst knowingly refused to submit to induction and since Parkhurst's own admissions amply established the knowing refusal (*supra*, pp. 17–18, P. 262–269) the conduct complained of could not have resulted in prejudice.

CONCLUSION

The questions presented were correctly decided below and are, in addition, so restricted to the particular facts of this case as to deprive them of general or future importance. No conflict of decisions is involved. It is therefore respectfully submitted that the petition for a writ of certiorari be denied.

ROBERT L. STERN,
Acting Solicitor General.
WARREN OLNEY III,
Assistant Attorney General.
BEATRICE ROSENBERG,
J. F. BISHOP,
Attorneys.

OCTOBER 1953.

APPENDIX

Statutes and Regulations Involved

Universal Military Training and Service Act:

Section 6 (g) [50 U. S. C. App., Supp. V, 456 (g)]:

> Regular or duly ordained ministers of religion, as defined in this title, and students preparing for the ministry under the direction of recognized churches or religious organizations, who are satisfactorily pursuing full-time courses of instruction in recognized theological or divinity schools, * * * shall be exempt from training and service (but not from registration) under this title.

Section 16 (g) [50 U. S. C. App., Supp. V, 466 (g)]:

> (1) The term "duly ordained minister of religion" means a person who has been ordained, in accordance with the ceremonial, ritual, or discipline of a church, religious sect, or organization established on the basis of a community of faith and belief, doctrines and practices of a religious character, to preach and to teach the doctrines of such church, sect, or organization and to administer the rites and ceremonies thereof in public worship, and who as his regular and customary vocation preaches and teaches the principles of religion and administers the ordinances of public worship as embodied in the creed or principles of such church, sect, or organization.
>
> (2) The term "regular minister of religion" means one who as his customary

vocation preaches and teaches the principles of religion of a church, a religious sect, or organization of which he is a member, without having been formally ordained as a minister of religion, and who is recognized by such church, sect, or organization as a regular minister.

(3) The term "regular or duly ordained minister of religion" does not include a person who irregularly or incidentally preaches and teaches the principles of religion of a church, religious sect, or organization and does not include any person who may have been duly ordained a minister in accordance with the ceremonial, rite, or discipline of a church, religious sect or organization, but who does not regularly, as a vocation, teach and preach the principles of religion and administer the ordinances of public worship as embodied in the creed or principles of his church, sect, or organization.

Section 12 (a) [50 U. S. C. App., Supp. V, 462 (a)]:

Any * * * person * * * who * * * refuses * * * service in the armed forces * * * or who in any manner shall knowingly fail or neglect or refuse to perform any duty required of him under or in the execution of this title * * * or directions made pursuant to this title, * * * shall, upon conviction in any district court of the United States of competent jurisdiction, be punished by imprisonment for not more than five years or a fine of not more than $10,000, or by both such fine and imprisonment * * *.

Regulations, Title 32, CFR (1951 ed.):

Section 1626.12:

Statement of person appealing. The person appealing may attach to his appeal a statement specifying the matters in which he believes the local board erred, * * *.

Section 1626.23:

Preliminary review. The appeal board will carefully check each file to determine whether all steps required by the regulations have been taken, whether the record is complete, and whether the information in the file is sufficient to enable it to determine the registrant's classification. If any steps have been omitted by the local board, if the record is incomplete, or if the information is not sufficient to enable the appeal board to determine the classification of the registrant, the appeal board shall return the file to the local board with a request for additional information or action. * * *

U. S. GOVERNMENT PRINTING OFFICE: 1953